

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

October 26, 2005

Clerk of Court

DAVID TURLEY,

Petitioner-Appellant,

v.

AL ESTEP, Warden, Limon
Correctional Facility, and THE
ATTORNEY GENERAL OF THE
STATE OF COLORADO,

Respondents-Appellees.

Nos. 04-1297 & 04-1300

(D.C. Nos. 04-Z-789 & 04-Z-790)
(D.Colo.)

ORDER

Before **BRISCOE, LUCERO,** and **MURPHY** , Circuit Judges.

Petitioner David Turley has filed a petition for panel rehearing. The respondents have provided a response. Our Order and Judgment filed in these cases on August 18, 2005, affirmed the district court's judgment dismissing Turley's petition for a writ of habeas corpus as untimely filed. In support of that ruling, we concluded Turley was not entitled to the equitable tolling of the one-year statute of limitations because he had not availed himself of the "stay-and-abeyance" procedure.

In consideration of the additional pleadings provided to the court by the parties with their rehearing briefs, we conclude Turley has sufficiently complied with the “stay-and-abeyance” procedure to carry his burden of demonstrating that equitable tolling should apply. Accordingly, we GRANT Turley’s petition for rehearing, VACATE the Order and Judgment filed in these cases on August 18, 2005, REVERSE the district court’s order dismissing Turley’s petition for a writ of habeas corpus, and REMAND these cases for further proceedings. All remaining motions, including Turley’s request for appointment of counsel, are DENIED.

Entered for the Court

Mary Beck Briscoe
Circuit Judge